

OHIO BOARD OF TAX APPEALS

Lowry Plumbing of Canton, Inc.,)
)
) CASE NO. 2009-A-450
)
) (INCOME WITHHOLDING TAX)
)
)
) ORDER
Richard A. Levin, Tax Commissioner)
of Ohio,)
)
) (Requiring Appellant to
) Show Cause)
)
)

APPEARANCES:

For the Appellant - Thomas P. Lowry, President
Lowry Plumbing of Canton, Inc.
707 Navarre Road SW
Canton, Ohio 44707-4056

For the Appellee - Richard Cordray
Attorney General of Ohio
Lawrence Pratt
Assistant Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215

Entered April 7, 2009

This appeal is now considered, sua sponte, by the Board of Tax Appeals. The notice of appeal in question was filed with this board on March 24, 2009. The taxpayer appeals from a final determination of the Tax Commissioner wherein the commissioner determined that he had no jurisdiction to consider the taxpayer’s petition for reassessment because the interest associated with the assessed tax had not been paid, pursuant to the requirements of R.C. 5747.13(E), which provides in pertinent part, as follows:

“(E) The portion of an assessment that must be paid upon the filing of a petition for reassessment shall be as follows:

“***

“(5) If the employer assessed filed, prior to the date of issuance of the assessment, the annual return required by division (E)(2) of section 5747.07 of the Revised Code covering the period at issue, and a balance of the taxes shown due on the return as computed on the return remains unpaid, payment of only that portion of the assessment representing the unpaid balance of tax and interest is required;”

From the limited record, consisting of appellant’s notice of appeal and a copy of the final determination from which the appeal is taken, it appears that while the taxpayer paid the tax in question, it has not paid the interest in question with the petition for reassessment, and, as such, the commissioner then determined he was without jurisdiction to consider appellant’s petition for reassessment. Thus, based upon the foregoing facts, it is the order of the Board of Tax Appeals that the appellant show cause why this board should not affirm the Tax Commissioner’s dismissal of appellant’s petition for reassessment.

All parties who wish to be heard upon this issue shall file a written response to this order within fourteen days of its issuance.

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